

**ORDINANCE NUMBER 2019-292**

**AN ORDINANCE ESTABLISHING REGULATIONS  
FOR SMALL CELL WIRELESS FACILITIES**

**WHEREAS**, the Telecommunications Act of 1996 affirmed the City of Madison's authority concerning the placement, construction, and modification of wireless telecommunications facilities; and

**WHEREAS**, pursuant to Alabama Code §11-45-1, municipal corporations may adopt resolutions and ordinances to provide for the safety, preserve the health, promote the prosperity, and improve the welfare, order, comfort, and convenience of the inhabitants of the municipality; and

**WHEREAS**, the City Council of the City of Madison finds that installation of small wireless telecommunications facilities without City review and permitting may pose significant concerns to the health, safety, public welfare, character, and environment of the City and its inhabitants; and

**WHEREAS**, the City recognizes that facilitating the development of small wireless facility technology can be an economic development asset to the City and of significant benefit to the City and its residents; and

**WHEREAS**, the City wishes to establish reasonable service fees and charges in order to facilitate the proper permitting and processing of applications for the placement of small wireless telecommunications facilities;

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Madison, Alabama, as follows:

**Section I.** The Code of Ordinances of the City of Madison, Alabama, is hereby amended to add a new Section 8-80 in Chapter 8, Article IV, Buildings, Construction, and Related Activities, as follows:

**"Small Cell Technology Facilities**

1. Definitions.

The terms below have the following meanings for purposes of this chapter.

*Abandonment* or *abandon(s)* means that, following the placement of small cell technologies facilities (and associated accessory equipment) or support structures in the city pursuant to a permit issued to a provider or an applicant, any of the following has occurred:

- (a) For any reason the facilities cease to be used to transmit signals, data, or messages, or otherwise be used for their intended purposes for a period of 180 days without the provider otherwise notifying the City and obtaining City approval;

- (b) The city revokes the permit for placement and use of those facilities due to nonpayment of applicable fees, the failure of the provider or applicant to comply with conditions in the permit or in this chapter, or other lawful reason; or
- (c) The provider or applicant fails to perform any of its responsibilities, obligations, or requirements in this chapter or in a permit that relate to the installation, construction, maintenance, use, or operation of the facilities, accessory equipment, or support structures, and that breach remains uncured for a period of 60 days after the city provides written notice of the breach to the provider or applicant.

*Accessory equipment* means any equipment other than an antenna that is used in conjunction with small cell technology facility arrangements. This equipment may be attached to or detached from a small cell technology wireless support structure, and includes, but, is not limited to, cabinets, optical converters, power amplifiers, radios, DWDM and CWDM multiplexers, microcells, radio units, fiber optic and coaxial cables, wires, meters, pedestals, power switches, and related equipment on or in the immediate vicinity of a support structure.

*Antenna* means communications equipment that transmits and receives electromagnetic radio signals, is attached to a small cell technology wireless support structure and is used to communicate wireless service.

*Applicant* whether singular or plural, means a personal wireless service provider, an entity that is authorized by a personal wireless service provider to apply for or receive a permit to install, construct, modify or maintain a small cell technology facility and related accessory equipment or support structure in the city, or an entity certificated by the state public service commission to provide telecommunication service.

*Application* means a formal request submitted to the city for a permit to install, construct, modify, or maintain a small cell technology facility and related accessory equipment or support structure.

*Appropriate Municipal Official* as used in this Chapter shall mean the City planning director, City building official, any City building inspections officer or deputy, fire marshal, and any other City official or City employee designated by the Mayor as the person to exercise the authority and perform the duties delegated by this Chapter.

*City* means the City of Madison, Alabama.

*Colocation* means the placement or installation of a new small cell wireless technology facility or related accessory equipment on an existing pole or other support structure that is owned, controlled or leased by a utility, the city, or other person or entity.

*Decorative pole* means a City pole that is specially designed and placed for aesthetic purposes and which contains minimal appurtenances such as lighting, decorations, signage, or small wireless facilities.

*Planning Commission* means the Planning Commission of the City.

*Personal wireless service provider or provider* means an entity that provides personal wireless communication services to the public or citizens of the city on a commercial basis and is authorized by the FCC to provide those services.

*Private property* means real property located in the City that does not lie within the right-of-way.

*Right-of-way* whether singular or plural, means the surface and space in, upon, above, along, across, over and below any public streets, avenues, highways, roads, courts, lanes, alleys, boulevards, ways, sidewalks, and bicycle lanes, including all public utility easements and public service easements within those places, as the same now or may hereafter exist, that are within the City's corporate boundaries and under its jurisdiction. This term shall not include county, state, or federal rights of way, any property owned by any person or entity other than the City, or any non-right of way property owned by the City such as a park or building.

*Small Cell Technology Facility(ies) or facilities*, whether singular or plural, means and includes both the antennae and associated Accessory Equipment of a small wireless facility, as that term is defined by Federal Communications Commission rule, 47 C.F.R. Section 1.6002, as it may be amended from time to time. Photographs and illustrations of the types, relative dimensions and scale of these facilities that are permitted in this chapter are attached as Attachment A to the permanent record of the ordinance from which this chapter is derived that is maintained by the City Clerk.

*Small cell technology wireless support structure or support structure*, whether singular or plural, means a freestanding structure designed or used to support, or capable of supporting, small cell technology facilities, including, but not limited to, utility poles, street light poles, traffic signal structures, rooftops, attics, or other enclosed or open areas of a building or accessory structure, a sign, or a flag pole.

*Stealth technology* means a method(s) of concealing or minimizing the visual impact of a small cell technology facility (and associated accessory equipment) and support structure by incorporating features or design elements which either totally or partially conceal such facilities or equipment. The use of these design elements is intended to produce the result of having said facilities and associated structures blend into the surrounding environment and/or disguise, shield, hide, or create the appearance that the facilities are an architectural component of the support structure. Photographs and illustrations of examples of the types of stealth technology that may be used when buildings are utilized as support structures and other applications of stealth technology that are currently contemplated are attached as Attachment B to the permanent record of the ordinance from which this chapter is derived that is maintained by the City Clerk.

2. Permit required to place small cell technology facilities in City rights-of-way or on City property.
  - (a) A provider or applicant must obtain a permit from the city before placing, installing, or constructing any small cell technology facility (and associated accessory equipment) on any support structure that is located either on City-owned property or within the right-of-way, or before substantially modifying the position or characteristics of any such existing facility within the right-of-way.

- (b) The Appropriate Municipal Official(s) will review and administratively process any request for a permit to determine whether it should be issued for the location and in the manner requested by the applicant. In this process, the burden is on the provider or applicant to demonstrate that the placement of the proposed small cell technology facility and associated accessory equipment or support structure on the right-of-way is the minimal physical installation which will achieve the goal of enhancing the provision of personal wireless services when considering all pertinent factors discussed in the provision immediately below. Except as set forth in this article, this permitting process will be administrative and not require the approval of any other city board or city official.
- (c) The factors, requirements, and guidelines that the Appropriate Municipal Official(s) will apply when determining whether to issue a permit for placement of small cell technology facilities and associated structures on the right-of-way are the following:
- (1) Whether denial of the application would prohibit or have the effect of prohibiting the provision of personal wireless service or telecommunications service;
  - (2) Whether the applicant has proposed support structures or facilities in the subject area that adhere to the following aesthetic requirements:
    - i. The facilities and support structures are designed to blend into the surrounding environment and complement existing streetscape elements or structures through the use of color, camouflaging, and architectural treatment;
    - ii. Equipment mounted to support structures match the support structure in color and general design unless different colors are required for public safety or service and reliability reasons;
    - iii. The facility designed utilizes stealth and camouflaging siting techniques so that it is substantially invisible to the extent that is technologically or commercially practicable (specifics designs in Exhibit B) and matches the color and texture of a building or support structure as closely as possible;
    - iv. The facility does not incorporate lighting, unless lighting is required for public safety or service and reliability reasons;
    - v. The facility does not increase the height of the building or structure to which it will be mounted, unless an applicant certifies that this requirement would prohibit service;
    - vi. Whether the facility matches the aesthetic character of the area in which the structures are requested, including surrounding buildings, properties, and uses, including whether the facilities and structures are consistent with the historic nature and characteristics of the requested location.
  - (3) The applicant's or provider's network coverage objective and whether the applicant or provider should use available or previously unconsidered alternative locations to place the support structures or facilities;
  - (4) Whether the proposed installation complies with applicable public safety codes;

- (5) Whether the proposed installation may interfere with vehicular traffic, passage of pedestrians, public utility infrastructure, or other use of the right-of-way by the public; and
  - (6) If the proposed installation will disturb conditions on the right-of-way, whether the applicant has certified that it will restore the subject area to its pre-existing condition following installation.
- (d) *Colocation.* To the extent practical, all small wireless facilities and associated accessory equipment that are placed in the city shall be attached to a pre-existing support structure that is owned, controlled, or leased by a utility, franchisee, the city, or other entity. If the applicant demonstrates that no commercially reasonable or technically feasible colocation opportunities exist to provide service in an area that an applicant proposes to serve, then the applicant may request that a new pole or other support structure be installed in that area for purposes of constructing the facilities. Before any new support structure is permitted, each of the following must occur:
  - (1) The applicant must certify in writing to the City that it was unable to co-locate on an existing facility for reason(s) such as i) lack of an existing structure; ii) lack of a structure meeting the technical needs of the carrier; or iii) not being able to secure an attachment agreement with the owner of an existing structure.
  - (2) The Appropriate Municipal Official must recommend the placement of a new support structure in the right-of-way; and
  - (3) If an applicant does not have a current and valid franchise agreement, which does not provide for support structure installation in the City's right-of-way, then the Planning Commission must review the recommendation of the Appropriate Municipal Official to issue a permit that includes the placement of a new support structure in the right-of-way. The Planning Commission will consider whether to approve any such new structure at a regular meeting that will be conducted as soon as practical after the Appropriate Municipal Official's recommendation is made.
  - (4) A provider may not collocate on or replace a decorative pole unless such collocation or decorative pole replacement conforms to the design aesthetics of the original decorative pole(s).
- (e) *Other dimensional requirements:*
  - (1) If a facility is attached to a utility pole or other support structure in the right-of-way, no antenna or other part of the facility shall extend more than five (5) feet above the height of that structure; provided that, in the event that the applicant demonstrates that National Electric Safety Code regulations or other factors create an undue hardship in complying with this height requirement, the Appropriate Municipal Official may permit a facility to extend up to ten (10) feet above the height of such support structure;

- (2) The accessory equipment shall, if reasonably possible, be placed at least ten 10) feet above the ground;
  - (3) The color of antenna and accessory equipment shall be compatible with that of the support structure; and
  - (4) The facility (including the accessory equipment) shall not be illuminated.
- (f) *Application process.*
- (1) At a minimum, each application for a permit shall contain all of the following:
    - a. Engineering drawings depicting the type of facility, support structure, and means and points at which such facilities and associated accessory equipment will be attached to a support structure;
    - b. Map(s) designating with specificity the location(s) of the requested facilities;
    - c. The geographic coordinates of all antenna and other proposed facilities;
    - d. If the facilities will be located on a support structure on the right-of-way that is owned by any entity other than the city or the applicant, a copy of any license, lease, agreement or other documentation evidencing that the owner of that support structure authorizes the facilities to be attached thereto or agrees in principle to authorize that attachment; provided that, if a representation is made to the city that the attachment has been authorized in principle by the owner of the support structure but the applicant subsequently fails to furnish the city documentation that finalizes any such agreement, the city may refuse to issue the requested permit until that documentation is provided, or, if the city issues the requested permit before receiving such final documentation, the subject permit may be revoked and any license to use that part of the right-of-way be rescinded.
    - e. If the applicant requests permission to place facilities on a new support structure, the substantiation therefor required by Section 2.d. of this chapter.

An application shall not be deemed complete until the applicant has submitted all documents, information, forms, and fees specifically enumerated in this chapter that pertain to the location, construction, or configuration of the facilities or support structures at the requested location(s). Within 10 calendar days after an application for permit is submitted, the city shall notify the applicant in writing if any additional information is needed to complete that application or supplemental information is required to process the request. If the city does not notify the applicant in writing that the application is incomplete within 10 days following its receipt, the application is deemed complete. If the city does notify an applicant that

the application is incomplete, after resubmission, the City will notify the applicant within 10 days following receipt if the application remains incomplete.

(g) *Time for processing application.*

Unless another date is specified in a written agreement between the city and the applicant, the city will review and make its final decision to approve or disapprove an application for a permit contemplated in this chapter and advise the applicant in writing of that determination within the following time periods:

- (1) Sixty (60) calendar days from the date an application for a permit is filed, or where the City informs the applicant of the need for additional information within 10 days of filing, sixty (60) calendar days after such additional information is submitted to the City, with respect to a request to co-locate facilities on an existing support structure; and
- (2) Ninety (90) calendar days from the date an application for a permit is filed with respect to a request to attach facilities to a new support structure.

To the extent additional information is required to complete the application after it is filed, the applicable calendar day review period set forth in this subsection shall be tolled and not continue to run until the applicant has provided any missing or requested supplemental information; provided that tolling shall not occur if the city does not advise the applicant in writing of the incompleteness of a submitted application within 10 days after that submission.

- (h) *Reconsideration/Appeal.* Any applicant that desires reconsideration of an administrative decision by the Appropriate Municipal Official to deny a request for a permit to place a facility or support structure on the right-of-way may seek review, modification or reversal of that decision by the Planning Commission by submitting a request for reconsideration with the city clerk within 15 calendar days following the Appropriate Municipal Official's decision. That request for reconsideration will be considered by the Planning Commission at a regular meeting as soon as practical after the request for reconsideration is made. If no request for reconsideration is submitted, the decision of the Appropriate Municipal Official will be final.

Additionally, the applicant, within 30 days following a decision by the Planning Commission to deny either:

- (1) A request for reconsideration; or
- (2) A decision by the Planning Commission to not approve the placement of a new support structure on the right-of-way;

may appeal either of those decisions by the Planning Commission to the City Council. If no appeal of those decision of the Planning Commission is made, those will be deemed final.

- (i) *Additional requirements.* Any provider or applicant to whom a permit is issued and that places facilities and associated support structures within the right-of-way also shall

comply with the following requirements as long as those facilities and support structures located on or under the right-of-way:

- (1) Prior to installing the facilities or support structures, the applicant shall provide the city a certificate(s) of insurance evidencing that it has obtained and will maintain the following types of insurance in connection with its operations on or use of City rights-of-way:
  - a. General liability coverage insuring the risk of claims for damages to persons or property arising from or related to the installation, construction, maintenance, operation, or any use of a facility or support structure placed on or along the right-of-way by the applicant (or any of their contractors) with minimum limits of \$1,000,000.00 per occurrence; and
  - b. Workers compensation insurance as required by statute.

The general liability coverage shall list and confirm through endorsement that the City is an additional insured, and coverage may be provided through a combination of a primary and umbrella policies. All insurance policies shall be furnished by insurers who are reasonably acceptable to the city, and authorized to transact business in the state. An applicant may elect to self-insure as long as it meets the other insurance requirements in this section. On an annual basis following initial installation at the time of the yearly permit payment, the applicant also shall furnish the city a certificate and endorsement indicating that the above-noted coverage remains and will remain in effect.

- (2) All facilities and associated support structures shall be installed, erected, maintained, and operated in compliance with applicable federal and state laws and regulations, including, but not limited to, regulations of the FCC.
- (3) Following the installation of any facilities and associated support structures, the provider or applicant shall furnish the Appropriate Municipal Official a written certification from a licensed professional engineer in the state stating that those structures have been inspected and are being maintained, operated and used in compliance with all applicable laws and regulations, including those of the FCC that pertain to the transmission of wireless communication signals.
- (4) The facilities and associated support structures must at all times be maintained in good and safe condition. No more frequently than on a triennial basis, or more frequently if good cause, the Appropriate Municipal Official may request that the provider or applicant, at either of their expense, furnish certification from a professional engineer who is licensed in the state that the facilities and support structures are in sound condition. Should that engineer deem those structures unsound, the provider or applicant shall furnish to the Appropriate Municipal Official a plan to remedy any unsafe conditions or structural defect(s) and take that remedial action at the provider or applicant's expense. For purposes of this provision, "good cause" shall mean circumstances have arisen that indicate the facilities and associated support



structures have been damaged, are not functioning in compliance with applicable laws and regulations, or otherwise pose a hazard to the public. If those support structures should fail at any time to comply with applicable laws and regulations, the provider or applicant, at either of their expense, shall cause those structures to be brought into compliance with said laws and regulations within 15 days of the date of any written notice to them from the Appropriate Municipal Official of non-compliance, or cease all personal wireless service operations related to those structures until the applicant or provider comes into full compliance with said laws and regulations.

- (5) Each applicant or provider that applies for a permit to place facilities (including the accessory equipment) and support structures on the right-of-way and installs and utilizes those structures shall defend, indemnify, and hold the city and its employees and officials, harmless from all demands, losses, expenses (including attorney's fees and court costs), claims for personal injury or property damage, judgments or liabilities of any type that may be asserted or claimed against the city (or its employees or officials) by any third person, firm or entity that arise out of or relate in any manner to the following:

- a. The installation, construction, maintenance, use or operation of the permitted facilities, accessory equipment or any support structure on or about the right-of-way; and
- b. The failure of the provider or applicant to perform any of their respective responsibilities, obligations and permit requirements in this chapter. Notwithstanding the foregoing, the provider or applicant shall not be obligated to indemnify the city for city claims resulting from the sole negligence or willful acts of the city (or its representatives).

- (j) *Permit and license fees.* The applicant for a permit to place facilities and associated support structures on the right-of-way shall pay the following types of fees that are listed in the Fee Schedule contained in Appendix A of the City Code:

- (1) A permit application and review fee to be paid when an application is submitted. Due to the fact that facility application processing will create work load burdens for City staff, the City reserves the right to require providers to reimburse the City for actual costs incurred in application processing prior to permit issuance if said costs exceed the permit application and review fee. The City may charge for administrative and advertising expenses, staff and professional review at standard hourly rates, and other actual and reasonable costs incurred. The City will provide evidence to applicant to prove actual reasonable costs.
- (2) A permit issuance fee per each support structure on the right-of-way contemplated for attachment; and
- (3) An annual license fee per each support structure on the right-of-way pertaining to the ongoing use of public property.

- (k) *Franchise agreements for other uses of right-of-way.* This section regulates the placement of small cell technology facilities (and associated accessory equipment) on

or in the immediate vicinity of support structures that are located or proposed to be located on the right-of-way. No provision in this section or elsewhere in this chapter is intended to permit, regulate, or authorize the placement by a provider or applicant of fiber optic lines, coaxial cable, switches, pedestals, or networking equipment of any type that is used to transport telecommunication signals, data, or messages between support structures or between any other points on the right-of-way. In the event any such provider or applicant desires to place telecommunications equipment or facilities along the rights-of-way at points not regulated by this chapter, the city requires the provider, unless otherwise lawfully authorized to install such facilities in the rights of way, to apply for a franchise agreement with the City that authorizes use of other locations on or along the right-of-way.

3. Placement of small wireless technology facilities on private property.
  - (a) A provider or applicant must obtain a permit from the city before placing, installing, or constructing any small cell technology facility (and associated accessory equipment) on any support structure that is located on private property, or before substantially modifying the position or characteristics of any such existing facility on private property.
  - (b) The Appropriate Municipal Official will review and administratively process any request for a permit to determine whether, in the exercise of the Appropriate Municipal Official's reasonable discretion, it should be issued for the location and in the manner requested. In this process, the burden is on the applicant to demonstrate that the placement of the proposed small cell technology facility and associated accessory equipment or support structure on private property is the minimal physical installation which will achieve the technological goal of enhancing the provision of wireless services. Except as set forth in this section, this permitting process will not require the approval of any city board.

The factors, guidelines, and requirements that the Appropriate Municipal Official may consider and will apply when determining whether to issue a permit for placement of facilities and any associated accessory equipment or support structure on private property include, but are not limited to, the following:

- (1) The factors and requirements set forth in Section 2 of this ordinance;
- (2) *Colocation*. The guidelines in Section 2 of this ordinance to utilize existing poles and support structures for the placement of facilities and accessory equipment are also applicable when considering whether to permit the installation of those facilities and support structures on private property, provided that Planning Commission approval is not required before a permit is issued to place a new pole or other support structure on private property if that action is appropriate.
- (3) The provider or applicant shall use stealth technology when installing the facilities and associated accessory equipment on any building or accessory to that building that is located on private property. Further, stealth technology should be used when placing facilities on other types of support structures on private property unless the applicant can reasonably demonstrate that, given the nature of the requested application, the use of such technology is

- a. Unnecessary; or
  - b. Impracticable.
- (4) If facilities are placed on an existing or new building or accessory to that building, the following dimensional regulations shall apply:
- a. Façade-mounted antennas shall not extend above the face of any wall or exterior surface of the building.
  - b. Roof-mounted antennas and accessory equipment may be permitted on buildings in accordance with the following table:

Height of Building	Maximum Height of Facility above Highest Point of Roof	Required Setback from Edge of Roof of Building
Up to 15 feet	8 feet, including antenna	1 foot for every foot of height of equipment
15-35 feet	10 feet, including antenna	1 foot for every foot of height of equipment
More than 35 feet	12 feet, including antenna	1 foot for every foot of height of equipment

- c. The antenna component of the facilities shall be limited to a maximum height of three feet and a maximum width of two feet; provided that authorization to install an antenna up to six feet in height may be permitted if a showing of the technological need for such equipment is made and other requirements of this section are met.
  - d. Accessory equipment must be located in an equipment cabinet, equipment room in an existing building, or in an unmanned equipment building. If the equipment building is freestanding, it shall conform to the City of Madison Zoning Ordinance with respect to building setbacks, that building shall not exceed 400 square feet, and its overall height shall be limited to 15 feet (if located on the ground) measured from the finished grade. Further, if an equipment building or cabinet is located in a residential zone, or the nearest adjoining property is in a residential zone, that building or cabinet shall be surrounded by landscaping to provide a screen of the same height as the building or cabinet.
- (5) *Application process.* Except as provided in subsections a. and b., immediately below, the same application process that is set forth in Section 2 will be utilized when processing any request for a permit to place facilities or support structures on private property, except that:
- a. Planning Commission approval to install a new support structure on private property is not required; and

- b. If the facilities are located on private property that is not owned or exclusively used by the applicant, the applicant shall present a license, lease, agreement or other documentation indicating that owner of said property authorizes the applicant the rights to place the facilities thereon and access thereto, or that such owner agrees in principle to grant the applicant those rights; provided that, if a representation is made to the city that the owner of private property has agreed in principle to grant those rights but the applicant subsequently fails to furnish the city documentation that shows such an agreement is final, the city may refuse to issue the requested permit until that documentation is provided, or, if the city issues the requested permit before receiving such final documentation, the subject permit and license may be revoked.
- (6) *Additional requirements.* Any provider or applicant to whom a permit is issued and that places facilities and associated support structures on private property also shall comply with the following requirements as long as those facilities and support structures are located thereon:
- a. All facilities and support structures shall be installed, erected, and maintained in compliance with applicable federal and state laws and regulations, including, but not limited to, regulations of the FCC.
  - b. Following the installation of any facilities and associated support structures, the provider or applicant shall furnish the Appropriate Municipal Official a written certification from a licensed professional engineer in the state stating that those structures have been inspected and are being maintained, operated and used in compliance with all applicable laws and regulations, including those of the FCC that pertain to the transmission of wireless communication signals.
  - c. The facilities and associated support structures must at all times be maintained in good and safe condition. At least triennially following the installation of the facilities or associated support structures, upon reasonable request and for good cause, the applicant shall furnish the Appropriate Municipal Official a written certification from a professional engineer licensed in the state indicating that those structures have been inspected and are being maintained, operated, and used in compliance with all applicable laws and regulations, including those of the FCC that pertain to the transmission of wireless communication signals. For purposes of this provision, "good cause" shall mean circumstances have arisen that indicate the facilities and associated support structures have been damaged, are not functioning in compliance with applicable laws and regulations, or otherwise pose a hazard to the public.
  - d. The facilities and associated support structures on private property must at all times be maintained in good and safe condition.
  - e. If those structures fail at any time to comply with said laws and regulations, the provider or applicant shall cause those structures to

be brought into compliance with said laws and regulations within 15 days of the date of any written notice to either of them of such non-compliance, or cease all personal wireless communications operations related to those structures until the provider or applicant comes into full compliance with applicable laws and regulations.

(7) *Permit and license fees.* The provider or applicant for a permit to place facilities and associated support structures on private property shall pay the following fees, which specified in Appendix A of the City Code:

- a. A permit application and review fee to be paid when an application is submitted; and
- b. A permit issuance fee per each support structure on private property contemplated for attachment.

4. Abandonment of facilities on rights-of-way.

If a provider or applicant abandons any facility (including the accessory equipment) or an associated support structure (collectively "facilities" for purposes of this section) that is located within the right-of-way, the following rights and obligations shall exist. The city may require the provider or applicant, at its sole expense, to remove and reclaim the abandoned facilities within 60 days from the date of written notice of abandonment given by the city to them and to reasonably restore the condition of the property at which the facilities are located to that existing before they were installed. If the provider or applicant fails to remove and reclaim its abandoned facilities within such 60-day period and the facilities are located on the right-of-way, the city shall have the rights to:

- (a) Remove them and charge its expense of any such removal operation to the account of the provider or applicant;
- (b) Purchase all abandoned facilities at the subject location from the provider or applicant in consideration for \$1.00;
- (c) At the city's discretion, either resell the abandoned facilities to a third party or dispose and salvage them; provided that the proceeds of any resale of abandoned facilities by the city to a third party shall be credited to the account of the applicant or provider that used those facilities before the abandonment; and
- (d) Charge any expense incurred by the city to restore the right-of-way to the account of the provider or applicant.

5. Preservation of availability for co-location.

To promote the public interest that is served by co-locating facilities and associated accessory equipment on existing support structures and thereby mitigating the installation of additional support structures throughout the city, no person or entity (including any provider, applicant, utility, or franchisee) that utilizes an existing support structure that is located on right-of-way or on private property in the city and has space available thereon may deny a provider or applicant the right to use or access an existing support structure for purposes of attaching facilities permitted by this chapter without sound operational or technological reason.

6. Non-applicability.

The placement of an antenna(s), facilities, or equipment related to the following types of wireless communication services are exempt from regulation under this chapter:

- (a) amateur radio service that is licensed by the FCC if the facilities related thereto are not used or licensed for any commercial purpose; and
- (b) facilities used by any federal, state or local government or agency to provide safety or emergency services.
- (c) the provisions in this chapter are supplemental to, and not intended to alter, affect or modify the provisions in chapter CROSS REF pertaining to the placement or use of macro telecommunications towers.

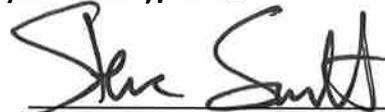
**Section II. Severability.** The provisions of this Ordinance are intended to be severable, and if any word, clause, phrase, sentence, paragraph, or provision of this Ordinance shall be invalidated by a court of competent jurisdiction, such invalidity shall not affect any other word, clause, phrase, sentence, paragraph, or provision hereof.

**Section III. Effective Date.** This Ordinance shall be deemed effective on January 1, 2020 or after its adoption by the City Council and proper publication as provided by law, whichever is later.

**Section IV. Conflict and Repeal.** Where this Ordinance differs or conflicts with other laws, rules and regulations applicable to the City, unless the right to do so is preempted or prohibited by the City, State, or Federal government, this Ordinance shall apply.

**Section V. Incorporation in the Code of Ordinances.** The provisions of this Ordinance shall be included in and incorporated in the Code of Ordinances of Madison, Alabama, as an addition of a new Section 8-80 in Chapter 8, Article IV, and shall be appropriately renumbered to conform to the uniform numbering system of the Code.

READ, PASSED, and ADOPTED this 13th day of January, 2020.



**Steve Smith, Council President**  
City of Madison, Alabama

ATTEST:



**Melanie A. Williard, City Clerk-Treasurer**  
City of Madison, Alabama

APPROVED this 15th day of January, 2020.



**Paul Finley, Mayor**  
City of Madison, Alabama



Minutes No.

2020-19-RG

Date of Meeting

Jan 13, 2020

Document No.

2019-292

Date Introduced

Dec 16, 2019

Minutes Introduced

2019-27-RG

Council Votes

	Absent	Aye	Nay	Abstain	Absent @ tov	Recused
Council Member Wroblewski	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Council Member Smith	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Council Member Powell	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Council Member Shaw	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Council Member Overcash	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Council Member Clark	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Council Member Seifert	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date Signed by Council President

Jan 13, 2020

Date signed by Mayor

Jan 15, 2020

Publication Date

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